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20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529

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**U.S. Citizenship  
and Immigration  
Services**

**MI**

**DEC 15 2004**



FILE:  Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because he had been convicted of two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that he knows he made a mistake, but that he also had paid for this mistake. He submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or
    - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

The record reflects the following:

1. On June 8, 2000, in the Superior Court of California, County of San Francisco, Case No. [REDACTED], the applicant was indicted for Count 1, possession of stolen property, in violation of 496 PC, a felony; Count 2, carrying a concealed firearm, in violation of 12025(2) PC, a misdemeanor; and Count 3, carrying a loaded firearm in public, in violation of 12031(a) PC, a misdemeanor. On January 4, 2001, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 3 years, and ordered to spend 30 days in jail. Count 1 was dismissed.
2. On January 23, 2001, in the Superior Court of California, County of San Francisco, Case No. [REDACTED] the applicant was indicted for Count 1, vandalism, in violation of 594(a) PC, a misdemeanor; and Count 2, disorderly conduct, in violation of 647(f) PC, a misdemeanor. On February 13, 2001, the applicant's "not guilty plea" as to Count 1 was withdrawn and he was referred to Pretrial Diversion. On April 5, 2001, the applicant was granted diversion. While diversion in California, pursuant to section 1000.2 PC, is not a conviction for immigration purposes, the applicant failed to submit the court documents to show the outcome of the progress report relating to this offense, and whether this charge was dismissed by the court based on successful diversion. Furthermore, the applicant failed to submit evidence to show the final disposition as to Count 2.
3. On February 18, 2003, in the Superior Court of California, County of Alameda, Docket No. [REDACTED] the applicant was convicted of driving with a blood alcohol level of .08 percent alcohol or more, in violation of 23152(b) VC, a misdemeanor. He was placed on probation for a period of 36 months, ordered to serve 4 days in jail, required to complete DUI School, and ordered to pay fine and restitution in the amount of \$1299.

The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least three misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The burden of proof is upon the applicant to establish that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.